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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CHRISTIAN M., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

BEATRIZ M. et al.,

Defendants and Appellants.

D049885

(Super. Ct. No. J515628)

APPEAL from a judgment of the Superior Court of San Diego County, Hideo Chino, Referee, Judge. Affirmed.

Beatriz M. and Leopoldo C. (together the parents) appeal a judgment of the juvenile court terminating their parental rights to their minor son, Christian M., under Welfare and Institutions Code section 366.26.¹ The parents challenge the sufficiency of

¹ Statutory references are to the Welfare and Institutions Code.

the evidence to support the court's findings the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A) and the sibling relationship exception of section 366.26, subdivision (c)(1)(E) did not apply to preclude terminating their parental rights. Leopoldo further contends the court erred by denying his request for a continuance of the selection and implementation hearing. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2005, two-month-old Christian became a dependent of the juvenile court and was removed from Beatriz's custody based on findings Christian and Beatriz tested positive for methamphetamine at the time of Christian's birth, Beatriz denied using drugs during her pregnancy, and she had received no prenatal care. The court ordered Beatriz to participate in reunification services. Leopoldo, who was an alleged father, refused to have a paternity test or appointed counsel.

During the next six months, Beatriz and her two older children, nine-year-old Jesus and five-year-old B.,² lived in four different locations. Beatriz began drug treatment and therapy, completed a parenting class and was having supervised visits with Christian. The San Diego County Health and Human Services Agency (Agency) social worker reported Beatriz continued to minimize the protective issues, failed to take responsibility for her actions, did not follow visitation rules and had not shown she made significant progress with her case plan. In the social worker's opinion, Beatriz had not

² Leopoldo is not the father of Jesus or B.

gained any insight into the effects of drug addiction on herself or Christian. The court ordered six more months of services for Beatriz.

Beatriz, who was pregnant with her fourth child, was taken to the hospital with contusions and lacerations on her face and hands resulting from an assault by Leopoldo. Beatriz reluctantly obtained a restraining order against Leopoldo but the next month, she cancelled it and moved in with him. Agency filed petitions in the juvenile court on behalf of Jesus and B. and removed them from Beatriz's care.

In a report prepared for the 12-month hearing, the social worker reported Beatriz had made minimal progress with her case plan. She did not take advantage of or benefit from services offered to her. Beatriz had not developed insight into the seriousness of her substance abuse and had not shown she could be a responsible or reliable parent. The court terminated reunification services and set a section 366.26 selection and implementation hearing.

Beatriz filed a section 388 modification petition seeking to have Christian returned to her care. After a hearing, the court denied the petition, finding Beatriz had not shown sufficient changed circumstances or that the proposed change was in Christian's best interests.³ Leopoldo, who was recently declared Christian's biological father, also filed a section 388 modification petition requesting reunification services. However, the court

³ Beatriz appealed the court's order denying her section 388 modification petition. In an unpublished opinion, we affirmed the order. (*In re Christian M.* (Mar. 22, 2007, D049454 [non.pub. opn.].)

summarily denied the petition, finding Leopoldo did not make a prima facie showing of changed circumstances or best interests.

At a contested selection and implementation hearing, Leopoldo sought a continuance to allow him to file a new section 388 petition based on an updated report showing he had made progress in his domestic violence program. The court denied Leopoldo's request for a continuance, noting the report did not show Leopoldo's circumstances had changed.

Christian's paternal uncle and aunt wanted to adopt him and their home had been approved for placement. According to a bonding study, Christian was comfortable with Beatriz and receptive to her affection, but he did not initiate affection. He separated easily from her, showing no signs of anxiety. Because of their lengthy separation, Christian had not internalized Beatriz as his psychological parent.

Social worker Rigoberto Vindiola assessed Christian as adoptable. He testified Beatriz's visits with Christian were fairly consistent and had recently increased to twice a week. Beatriz was appropriate and affectionate with Christian and he eventually warmed up to her and seemed to enjoy visits. However, Christian did not hug or kiss Beatriz and was not sad at the end of visits. In Vindiola's opinion, Beatriz and Christian did not have a beneficial parent-child relationship; rather, Christian's parenting needs were met by others. Vindiola stated terminating parental rights would not be detrimental to Christian and adoption was in his best interests.

Christian, Jesus and B. were currently living in the same foster home and all three minors were present during visits with Beatriz. Christian enjoyed visits with his siblings,

but it was unclear whether he recognized Jesus as his brother. Vindiola believed the benefits of adoption for Christian outweighed the benefits of maintaining a sibling relationship. In Vindiola's opinion, two-year-old Christian would not miss his siblings if he were placed in an adoptive home.

Beatriz testified she had two-hour visits twice a week with Christian. They ate and played together and he called her "Mamma." Christian's siblings also played with him during visits.

After considering the evidence and hearing argument of counsel, the court found Christian was likely to be adopted and none of the circumstances of section 366.26, subdivision (c)(1) applied to preclude terminating parental rights.

DISCUSSION

I

The parents challenge the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A) did not apply to preclude terminating their parental rights. They assert Beatriz regularly visited Christian, who would benefit from continuing his relationship with her.

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the

findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of five specified exceptions. (§ 366.26, subd. (c)(1)(A)-(E); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(A) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for

adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App. 4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

Although Beatriz's visitation with Christian became increasingly consistent, she did not meet her burden of showing their relationship was sufficiently beneficial to outweigh the benefits of adoption for him. Christian enjoyed visits with Beatriz and eventually warmed up to her, but he did not initiate affection and he separated easily from her at the end of visits. Christian had not internalized Beatriz as his psychological parent. His parenting needs were met by others. There was no evidence of a "significant, positive, emotional attachment" from Christian to Beatriz such that terminating the parent-child relationship would result in great detriment to him. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Rather, the evidence showed Christian's need for permanence and stability through adoption outweighed any interest in preserving parental ties.

Where, as here, the biological parent does not fulfill a parental role, "the child should be given every opportunity to bond with an individual who will assume the role of

a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(A) did not apply to preclude terminating parental rights.

II

The parents challenge the sufficiency of the evidence to support the court's finding the sibling relationship exception of section 366.26, subdivision (c)(1)(E) did not apply to preclude terminating their parental rights. They assert Christian had lived with his siblings for half his life and had a good connection with them, and thus, it was in his best interests to continue those relationships.

A

The sibling relationship exception to terminating parental rights applies when the juvenile court finds there is a compelling reason for determining that termination would be detrimental to the child because it would substantially interfere with that child's sibling relationship. (§ 366.26, subds. (c)(1), (c)(1)(E).) Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home and whether the child has strong bonds with a sibling. The court must also consider whether ongoing contact is in the child's best interests, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (§ 366.26, subd. (c)(1)(E).) The purpose of this exception is to preserve long-standing sibling relationships that "serve as anchors for dependent children whose lives are in turmoil." (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 404.)

"The sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) Similar to the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A), application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 951.) The parent must first show: (1) the existence of a significant sibling relationship; (2) termination of parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at p. 952.) Once the parent shows a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefit of adoption. (*Id.* at pp. 952-953.)

B

Christian was removed from home at birth and did not live with Jesus and B. until he was a year old. Although Christian seemed to enjoy visits with his siblings, there was no evidence of a strong bond or significant sibling relationship. Rather, the evidence showed Christian would not miss his siblings if he were placed in an adoptive home, and thus it would not be detrimental to him if parental rights were terminated. The evidence amply supports a finding the benefit to Christian of continuing the sibling relationships was outweighed by the benefits he would realize through adoption. (*In re L.Y.L., supra*, 101 Cal.App.4th at pp. 952-953.) Further, there was no showing the paternal aunt and uncle were unwilling to facilitate continued contact between Christian and his siblings. Substantial evidence supports the court's finding the exception of section 366.26,

subdivision (c)(1)(E) did not apply to preclude terminating parental rights. (See *In re Celine R.* (2003) 31 Cal.4th 45, 61-62.)

III

Leopoldo contends the court abused its discretion by denying his request for a continuance of the selection and implementation hearing for purposes of filing another section 388 modification petition. Leopoldo asserts a brief continuance would have enabled him to address the possibility of having Christian returned to his custody, which was in Christian's best interests.

A

Under section 352, the juvenile court may grant a continuance of any hearing only on a showing of good cause and only if the continuance is not contrary to a minor's best interests. In considering the minor's interests, "the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (§ 352, subd. (a); *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810.) Continuances in juvenile cases are discouraged. (*Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) We reverse an order denying a continuance only on a showing of an abuse of discretion. (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.)

B

Leopoldo sought a continuance in an attempt to show his circumstances had changed because he had made progress with domestic violence counseling, and therefore it was in Christian's best interests to be placed with him. However, as the juvenile court

recognized, a section 388 modification petition would not have been successful because Leopoldo could not show, even with evidence of his continued progress in counseling, that his circumstances had changed. Accordingly, the court declined to grant a continuance based on Leopoldo's last minute effort to postpone a permanent plan for Christian.

A continuance of the selection and implementation hearing, regardless of how brief, would have impacted Christian's need to have his custody status promptly resolved and his placement made permanent and secure. The court acted well within its discretion by denying Leopoldo's continuance request.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P.J.

IRION, J.